

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAURICE ANTHONY BROWN.

Plaintiff,

V.

JACI MICHAELIS, *et al.*,

Defendants.

CASE NO. 2:22-cv-00828-LK-GJL

ORDER DENYING MOTIONS TO AMEND

This matter is before the Court on referral and on Plaintiff's two Motions for leave to file an Amended Complaint. Dkts. 39, 42. Because Plaintiff has not filed a complete proposed Amended Complaint with his latest Motion for leave to amend (Dkt. 42), the Court denies the Motions (Dkts. 39, 42) without prejudice, meaning that Plaintiff can file a new Motion with a complete proposed Amended Complaint as described below.

I. BACKGROUND

In his operative Complaint, Plaintiff alleges a variety of claims related to his medical care while in the custody of the Department of Corrections (“DOC”). Dkt. 13. More specifically,

1 Plaintiff alleges Defendants were deliberately indifferent to his medical needs relating to
2 treatment for his diabetes and a condition with his kidneys. *Id.*

3 After the Complaint was served and the Court subsequently entered a Pretrial Scheduling
4 Order (*see* Dkts. 14, 28), Plaintiff filed a Motion for leave to file an Amended Complaint. Dkt.
5 31. However, because Plaintiff failed to file a proposed Amended Complaint with his Motion,
6 the Court denied the Motion for leave to amend without prejudice in an Order entered on March
7 29, 2023. Dkt. 35. The Court also informed Plaintiff he could file a new Motion for leave to
8 amend with a complete proposed Amended Complaint on or before April 28, 2023. *See id.*

9 On April 26, 2023, Plaintiff filed a Motion for an extension of time to file his Amended
10 Complaint. Dkt. 37. The Court granted Plaintiff's Motion on May 1, 2023, directing Plaintiff to
11 file an Amended Complaint on or before May 30, 2023. *See* Dkt. 38. Also on May 1, 2023,
12 Plaintiff filed a Motion for Leave to file an Amended Complaint with an attached proposed
13 Amended Complaint. Dkt. 39. Defendants responded to the Motion, stating they do not oppose
14 the filing of a second Amended Complaint. Dkt. 41.

15 On May 30, 2023, Plaintiff filed another Motion for leave to file an Amended Complaint.
16 Dkt. 42. In the Motion, Plaintiff seeks to add Defendants and claims for relief, but does not
17 attach a complete proposed Amended Complaint. *See id.* Rather, the filing seemingly consists of
18 a supplement to the proposed Amended Complaint attached to his earlier Motion. *See* Dkts. 39,
19 42.

20 **II. DISCUSSION**

21 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

22 (1) ***Amending as a Matter of Course***

23 A party may amend its pleading once as a matter of course within: (A) 21 days
24 after serving it, or (B) if the pleading is one to which a responsive pleading is

1 required, 21 days after service of a responsive pleading or 21 days after service
 2 of a motion under Rule 12(b), (e), or (f), whichever is earlier.

3 (2) ***Other Amendments***

4 In all other cases, a party may amend its pleading only with the opposing party's
 5 written consent or the court's leave. The court should freely give leave when
 6 justice so requires.

7 Here, the time for filing an Amended Complaint as a matter of course has expired. *See*
 8 Dkt.; Fed. R. Civ. P. 15(a). In response to Plaintiff's first Motion for leave to file an Amended
 9 Complaint at issue here, Defendants state they do not oppose Plaintiff's Motion. *See* Dkt. 41.
 10 However, Plaintiff has now filed a second Motion for leave to file an Amended Complaint that
 11 adds Defendants and claims, but does not attach a complete proposed Amended Complaint. Dkt.
 12 42. *See also* Local Civil Rule 15 ("A party who moves for leave to amend a pleading, or who
 13 seeks to amend a pleading by stipulation and order, must attach a copy of the proposed amended
 14 pleading as an exhibit to the motion or stipulation.").

15 Further, as evidenced by his second Motion for leave to file an Amended Complaint (Dkt.
 16 42), Plaintiff seeks to supplement his prior proposed Amended Complaint, but an amended
 17 pleading must operate as a complete substitute for the original complaint. *See Ferdik v. Bonzelet*,
 18 963 F.2d 1258, 1262 (9th Cir. 1992) (citing *Hal Roach Studios v. Richard Feiner & Co.*, 896
 19 F.2d 1542, 1546 (9th Cir. 1990)). "All causes of action alleged in an original complaint which
 20 are not alleged in an amended complaint are waived." *Marx v. Loral Corp.*, 87 F.3d 1049, 1055-
 21 56 (9th Cir. 1996) (quoting *King v. Atiyeh*, 814 F.2d 565 (9th Cir. 1987)).

22 Because Plaintiff has failed to file a proposed Amended Complaint with the latest Motion
 23 for leave to amend which seeks to add Defendants and claims, the Court denies without prejudice
 24 the Motions for leave to file an Amended Complaint (Dkts. 39, 42). Plaintiff may file a new
 Motion with a complete proposed Amended Complaint, on or before July 6, 2023. Should

Plaintiff choose not to file a new Motion for leave to amend with an attached proposed Amended Complaint by July 5, 2023, the case will proceed with the first Amended Complaint (Dkt. 13) as the operative Complaint.

The Court further notes that, in order to amend his first Amended Complaint, Plaintiff must file a complete proposed Amended Complaint, and not a supplement. Plaintiff shall present the Amended Complaint on the form provided by the Court. The Amended Complaint must be legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should contain the same case number, and it may not incorporate any part of the original Complaint by reference. The Amended Complaint will act as a complete substitute for the original Complaint and not as a supplement.

III. CONCLUSION

For the reasons set forth above, the Court **DENIES** without prejudice Plaintiff's Motions for leave to file an Amended Complaint. Dkts. 39, 42. Plaintiff may, however, file a new Motion with a complete proposed Amended Complaint **on or before July 6, 2023**. If Plaintiff does not file a Motion for leave to amend by July 6, 2023, the case will proceed with Plaintiff's first Amended Complaint (Dkt. 13) as the operative complaint.

The Clerk is directed to send Plaintiff this Order along with the appropriate forms for filing a 42 U.S.C. § 1983 civil rights complaint.

Dated this 6th day of June, 2023.


Grady J. Leupold
United States Magistrate Judge